

§ 380.39

(1) Any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any covered financial company for which the Corporation has been appointed receiver, including any assets which the Corporation may acquire from itself as such receiver; or

(2) Any claim relating to any act or omission of such covered financial company or the Corporation as receiver.

§ 380.39 Contingent claims.

(a) The Corporation as receiver shall not disallow a claim based on an obligation of the covered financial company solely because the obligation is contingent. To the extent the obligation is contingent, the receiver shall estimate the value of the claim, as such value is measured based upon the likelihood that such contingent obligation would become fixed and the probable magnitude thereof.

(b) If the receiver repudiates a contingent obligation of a covered financial company consisting of a guarantee, letter of credit, loan commitment, or similar credit obligation, the actual direct compensatory damages for repudiation shall be no less than the estimated value of the claim as of the date the Corporation was appointed receiver of the covered financial company, as such value is measured based upon the likelihood that such contingent claim would become fixed and the probable magnitude thereof.

(c) The Corporation as receiver shall estimate the value of a claim under paragraphs (a) or (b) of this section no later than 180 days after the claim is filed, unless such period is extended by a written agreement between the claimant and the receiver.

(d) Except for a contingent claim that becomes absolute and fixed prior to the receiver's determination of the estimated value, such estimated value of a contingent claim shall be recognized as the allowed amount of the claim for purposes of distribution.

(e) The estimated value of a contingent claim shall constitute the receiver's determination of the claim for purposes of § 380.38(d) and 12 U.S.C. 5390(a)(9)(D).

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§ 380.50 Determination of secured claims.

(a) In the case of a claim against a covered financial company that is secured by any property of the covered financial company, the Corporation as receiver shall determine the amount of the claim, whether the claimant's security interest is legally enforceable and perfected, the priority of the claimant's security interest, and the fair market value of the property that is subject to the security interest. The Corporation as receiver may treat the portion of the claim which exceeds an amount equal to the fair market value of such property as an unsecured claim.

(b) The fair market value of any property of a covered financial company that secures a claim shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property and at the time of such proposed disposition or use.

(c) The Corporation as receiver may recover from any property of a covered financial company that secures a claim the reasonable and necessary costs and expenses of preserving or disposing of such property to the extent of any benefit to the claimant, including the payment of all ad valorem property taxes with respect to such property.

(d) To the extent that a claim is secured by property of a covered financial company and the value of such property, after any recovery under paragraph (c) of this section, is greater than the amount of such claim, there shall be allowed to the claimant a secured claim for interest on such claim and any reasonable fees, costs, or charges provided for under the agreement or State statute under which the claim arose to the extent of the value of such property.

§ 380.51 Consent to certain actions.

(a) *In general.* Any claimant alleging a legally valid and enforceable or perfected security interest in property of a covered financial company or control of any legally valid and enforceable security entitlement in respect of any asset held by the covered financial company for which the Corporation has

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been appointed receiver may seek the consent of the receiver for relief from the provisions of 12 U.S.C. 5390(c)(13)(C).

(b) *Contents of request.* A request for consent of the Corporation as receiver for relief from the provisions of 12 U.S.C. 5390(c)(13)(C) shall be in writing and contain the following information:

(1) The amount of the claim, with supporting documentation;

(2) A description of the property that secures the claim, with supporting documentation of the claimant's interest in the property;

(3) The value of the property, as established by an appraisal or other supporting documentation; and

(4) The proposed disposition of the property by the claimant, including the expected date of such disposition.

(c) *Determination by receiver.* The Corporation as receiver shall grant its consent to a request for relief from the provisions of 12 U.S.C. 5390(c)(13)(C) if it determines that the claimant has a legally valid and enforceable or perfected security interest or other lien against the property of a covered financial company and the receiver will not use, sell, or lease the property. If the Corporation as receiver determines that it will use, sell, or lease such property and that adequate protection is necessary and appropriate, the receiver may provide adequate protection instead of granting consent.

(d) *Consent deemed granted.* If the Corporation as receiver has not notified the claimant of the determination whether to grant or withhold consent under this section within 30 days after a request for consent has been submitted, consent shall be deemed to be granted.

(e) *Expiration by operation of law.* Notwithstanding any determination by the Corporation as receiver to withhold consent under this section, the prohibitions described in 12 U.S.C. 5390(c)(13)(C)(i) are no longer applicable 90 days after the appointment of the receiver.

(f) *Limitations.* Any consent granted by the Corporation as receiver under this section shall not act to waive or relinquish any rights granted to the Corporation in any capacity, pursuant to any other applicable law or any

agreement or contract, and shall not be construed as waiving, limiting or otherwise affecting the rights or powers of the Corporation as receiver to take any action or to exercise any power not specifically mentioned, including but not limited to any rights, powers or remedies of the receiver regarding transfers taken in contemplation of the covered financial company's insolvency or with the intent to hinder, delay or defraud the covered financial company or the creditors of such company, or that is a fraudulent transfer under applicable law.

(g) *Exceptions.* (1) This section shall not apply in the case of a contract that is repudiated or disaffirmed by the Corporation as receiver.

(2) This section shall not apply to a director or officer liability insurance contract, a financial institution bond, the rights of parties to certain qualified financial contracts pursuant to 12 U.S.C. 5390(c)(8), the rights of parties to netting contracts pursuant to 12 U.S.C. 4401 et seq., or any extension of credit from any Federal reserve bank or the Corporation to any covered financial company or any security interest in the assets of a covered financial company securing any such extension of credit.

§ 380.52 Adequate protection.

(a) If the Corporation as receiver determines that it will use, sell, or lease or grant a security interest or other lien against property of the covered financial company that is subject to a security interest of a claimant, the receiver shall provide adequate protection by any of the following means:

(1) Making a cash payment or periodic cash payments to the claimant to the extent that the sale, use, or lease of the property or the grant of a security interest or other lien against the property by the Corporation as receiver results in a decrease in the value of such claimant's security interest in the property;

(2) Providing to the claimant an additional or replacement lien to the extent that the sale, use, or lease of the